

Appl. No. 10/632,375
Atty. Docket No. AA540C
Amdt. dated July 10, 2006
Reply to Office Action of February 8, 2006
Customer No. 27752

REMARKS

Claims 1 and 9-20 are pending in the present application. Claim 1 has been previously amended to further define the present invention wherein the matter of Claim 3, 4, 5, 6, 7, and 8 have been incorporated into the claims and a further defining of the phase changing agent. Claims 3-8 have been canceled.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

REJECTIONS

103 Rejections

1) Claims 1 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,538,720 ('720) in view of US 6,540,989 ('989). Applicants respectfully traverse this rejection.

In order to establish a prima facie cast of obviousness, the Examiner must show that (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there is a reasonable expectation of success, and (3) all of the limitations of the claims are taught or suggested in the prior art (M.P.E.P. 2143).

However, all of the limitation of the claims are not taught or suggested in the prior art. '720 discloses a composition for hair treatment comprising at least two compositions that are kept separate until application and which upon mixing increase in viscosity while generating heat, wherein the composition comprises an anhydrous mixture of a physiologically compatible salt that generates heat when mixed with water and at least one thickening agent, and further comprises at least one polyalcohol that is liquid at 25 °C.

However, all of the limitation of the claims are not taught or suggested in the prior art. Specifically, as the Office Action asserts, '720 fails to teach the claimed stearyl

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alcohol, cetyl alcohol and mixtures thereof, and '720 also fails to teach the claimed amidoamines.

'989 teaches a self-warming hair composition comprising a glycol, a quaternary ammonium compound, an amidoamine and a silicone. The Examiner asserts that it would have been obvious for one of skill in the art at the time of the invention to add amidoamines and fatty alcohol (cetyl, stearyl alcohols) conditioners of '989 to the composition of '720. With respect to the limitation "phase changing agent", while '989 fails to state the limitation, the office action asserts the compounds possess the property. Further, with respect to the ratio of amidoamine and acid claimed, the Office Action asserts that '989 teaches that a clear conditioning composition is obtained with amino acid neutralized with acid. Accordingly, the Office Action asserts it is the optimizing of the ratio of amidoamine and acid so as to obtain an effective conditioning effect.

However, while '989 discloses amido amines and fatty alcohols as deposition aides and conditioners, one of skill in the art would not be motivated to look to '989 in order to make the surprising discovery that by the use of the specific combination of the phase changing agent and the inert carrier, together with the other required elements, the present invention meets the need for preventing the composition from warming up to a higher temperature than expected, and providing prolonged warming. '989 Provides no motivation to use phase changing agent selected from cetyl alcohol, stearyl alcohol and mixtures thereof, polyethylene glycol inert carrier, nor the combination thereof. Further, '989 provides no motivation to use such a combination together with anhydrous magnesium sulfate heat generating agent. Such unexpected results were not generally known or disclosed in '989 and it was not a simple optimization or workable ranges by routine experimentation to arrive as these discoveries.

Further, as '989 does not disclose the combination of an anhydrous magnesium sulfate heat generating agent, a phase changing agent selected from cetyl alcohol, stearyl alcohol and mixtures thereof, and a polyethylene glycol inert carrier, the fatty alcohols are listed as one of many possible conditioning ingredients in the final shampoo composition. Within the category of conditioning agents, a very large range of agents are given. And

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there are no specific examples of the present invention's required combination exemplified in '989.

The possible shampoo formulations that can be devised by selecting items from '989 ingredients number in the hundreds. A shampoo combining a specific amido amine, a conditioning agent such as the fatty alcohol is only one of these hundreds of possible shampoo formulations. There is no embodiment of this specific combination in the examples. Therefore, Applicants contend that the '989 does not disclose the present invention's combination nor would one of skill in the art be motivated to look to modify the '720 reference or to combine '989 teachings with '720.

Therefore, all of the limitations of the claims, as now amended, are not taught or suggested '720 in combination with '989 and further there is no motivation to modify the teachings of '720 with '989. Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

2) Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,538,720 ('720) in view of US, 6,450,989 ('989), and as applied to claims 1-8, 12-16, 18 and 20 above, and further in view of EP 027 730 (EP 730). Applicants respectfully traverse this rejection.

The Examiner asserts that Claims 9-11 recite polyoxyalkylene derivatives; in particular Claims 8 recites polyoxyethylene/polyoxypropylene block copolymer. The Examiner asserts that '720 fails to specifically teach the claimed polyoxyalkylene derivatives of the instant claims. EP '730 teaches cosmetic compositions for hair or skin treatment, comprising heat generating compounds when brought into contact with water. Among the heat generating compounds EP '730 teaches fatty alcohols, alkylene glycols and polyoxyalkylene derivatives. Therefore, the Examiner asserts that it would have been obvious for one of skill in the art to use pluronic or any other suitable polyoxyalkylene derivatives as heat generating agents in the composition of '720 because EP '730 teaches that the above polyoxyalkylene derivatives are preferable as heat generating compounds and suggest that the heat generating compound give an excellent finishing and cleansing effect to consumer upon application, which results in a comfortable hot feeling.

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In order to establish a prima facie cast of obviousness, the Examiner must show that (1) there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there is a reasonable expectation of success, and (3) all of the limitations of the claims are taught or suggested in the prior art (M.P.E.P. 2143).

However, all of the limitation of the claims are not taught or suggested in the prior art. '720 discloses a composition for hair treatment comprising at least two compositions that are kept separate until application and which upon mixing increase in viscosity while generating heat, wherein the composition comprises an anhydrous mixture of a physiologically compatible salt that generates heat when mixed with water and at least one thickening agent, and further comprises at least one polyalcohol that is liquid at 25 °C.

However, all of the limitation of the claims are not taught or suggested in the prior art. Specifically, as the Office Action asserts, '720 fails to teach the claimed stearyl alcohol, cetyl alcohol and mixtures thereof, and '720 also fails to teach the claimed amidoamines.

'989 teaches a self-warming hair composition comprising a glycol, a quaternary ammonium compound, an amidoamine and a silicone. The Examiner asserts that it would have been obvious for one of skill in the art at the time of the invention to add amido amines and fatty alcohol (cetyl, stearyl alcohols) conditioners of '989 to the composition of '720. With respect to the limitation "phase changing agent", while '989 fails to state the limitation, the office action asserts the compounds possess the property. Further, with respect to the ratio of amidoamine and acid claimed, the Office Action asserts that '989 teaches that a clear conditioning composition is obtained with amino acid neutralized with acid. Accordingly, the Office Action asserts it is the optimizing of the ratio of amido amine and acid so as to obtain an effective conditioning effect.

However, while '989 discloses amido amines and fatty alcohols as deposition aides and conditioners, one of skill in the art would not be motivated to look to '989 in order to make the surprising discovery that by the use of the specific combination of the

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phase changing agent and the inert carrier, together with the other required elements, the present invention meets the need for preventing the composition from warming up to a higher temperature than expected, and providing prolonged warming. '989 Provides no motivation to use phase changing agent selected from cetyl alcohol, stearyl alcohol and mixtures thereof, polyethylene glycol inert carrier, nor the combination thereof. Further, '989 provides no motivation to use such a combination together with anhydrous magnesium sulfate heat generating agent. Such unexpected results were not generally known or disclosed in '989 and it was not a simple optimization or workable ranges by routine experimentation to arrive as these discoveries.

Further, as '989 does not disclose the combination of an anhydrous magnesium sulfate heat generating agent, a phase changing agent selected from cetyl alcohol, stearyl alcohol and mixtures thereof, and a polyethylene glycol inert carrier, the fatty alcohols are listed as one of many possible conditioning ingredients in the final shampoo composition. Within the category of conditioning agents, a very large range of agents are given. And there are no specific examples of the present invention's required combination exemplified in '989.

The possible shampoo formulations that can be devised by selecting items from '989 ingredients number in the hundreds. A shampoo combining a specific amido amine, a conditioning agent such as the fatty alcohol is only one of these hundreds of possible shampoo formulations. There is no embodiment of this specific combination in the examples. Therefore, Applicants contend that the '989 does not disclose the present invention's combination nor would one of skill in the art be motivated to look to modify the '720 reference or to combine '989 teachings with '720.

Therefore, all of the limitations of the claims, as now amended, are not taught or suggested '720 in combination with '989 and further there is no motivation to modify the teachings of '720 with '989. Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

Likewise, '730 neither teaches a phase changing agent selected from the group consisting of cetyl alcohol, stearyl alcohol, and mixtures thereof, as required of the present invention, nor does '730 teach the use of an inorganic heat generating agent being

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anhydrous magnesium sulfate in combination with phase changing agent and an inert carrier, each of which is required by the present invention in Claim 1 and from which Claims 9-11 depend. Applicants have shown that there is therefore no prima facie cast of obviousness and respectfully request withdraw of the rejection.

Conclusion

Applicants have made an earnest effort to place their application in proper form and distinguish their claimed invention from the prior art which was applied in the February 8, 2006 Office Action. WHEREFORE, consideration of this application, consideration of the accompanying claims and claim amendments submitted herewith, withdrawal of the rejections under 35 U.S.C 103, and allowance of Claims 1 and 9-20 are respectfully requested.

Respectfully submitted,

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